

FILED
SECURITIES DIVISION
MAR 10 2022

INDIANA
SECRETARY OF STATE

STATE OF INDIANA
OFFICE OF THE SECRETARY OF STATE
SECURITIES DIVISION

IN THE MATTER OF:

BLOCKFI LENDING LLC;

RESPONDENT.

)
) Cause No. 22-0002 CA
)
)

ORDER APPROVING CONSENT AGREEMENT

The Office of the Indiana Secretary of State, Securities Division and Respondent BlockFi Lending LLC filed an executed Consent Agreement to be reviewed by the Securities Commissioner ("Commissioner"). This agreement is subject to the approval and adoption of the agreement by the Commissioner. That agreement is attached and incorporated by reference as Exhibit A of this order.

The Commissioner, having reviewed the agreement, and finding it to be in the public interest, hereby ADOPTS the agreement as a FINAL ORDER, thereby ordering the parties to abide by its terms.

APPROVED and ORDERED at Indianapolis, Indiana this 10th day of March, 2022.

HOLLI SULLIVAN
SECRETARY OF STATE



JOHN COCHRAN
SECURITIES COMMISSIONER



STATE OF INDIANA
OFFICE OF THE SECRETARY OF STATE
SECURITIES DIVISION

FILED
SECURITIES DIVISION
MAR 10 2022

INDIANA
SECRETARY OF STATE

IN THE MATTER OF:

BLOCKFI LENDING LLC;

RESPONDENT.

)
)
)
)

Cause No. 22-0002 CA

CONSENT AGREEMENT

I. SUMMARY

Petitioner, the Office of the Indiana Secretary of State, Securities Division (“Division”), and BlockFi Lending LLC (“BlockFi”) submit this agreement to the Securities Commissioner (“Commissioner”) for approval, and request that an Order be entered including, and enforcing, the terms as set out below.

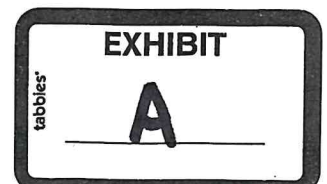
BlockFi is a New Jersey-based financial services company that offered and sold interest-bearing digital asset accounts called BlockFi Interest Accounts (“BIAs”), through which investors lend digital assets to BlockFi in exchange for BlockFi’s promise to provide variable monthly interest payments.

State securities regulators, as members of the North American Securities Administrators Association (“NASAA”), formed a working group, (the “Multistate Working Group”) and conducted an investigation into whether BIAs involved the offer and sale of unregistered securities by BlockFi to retail investors.

BlockFi has cooperated with state securities regulators and the Multistate Working Group conducting the investigation by responding to inquiries, providing documentary evidence and other materials, and providing access to facts relating to the investigations.

BlockFi has advised the Multistate Working Group of its agreement to resolve the investigation pursuant to the terms specified in this Consent Agreement and pursuant to the multistate resolution recommended by the Multistate Working Group.

BlockFi will cease and desist offering or selling the BIAs or any security that is not registered, qualified, or exempt to new clients in the United States and cease accepting further investments or funds in the BIAs by current U.S. clients, unless and until the BIAs or other



securities are registered, qualified, or otherwise exempt.

BlockFi shall pay up to a total of fifty million dollars (\$50,000,000.00) in settlement payments divided equally among the 50 states, the District of Columbia, Puerto Rico, and the U.S. Virgin Islands and paid to each of the 53 jurisdictions that enter into an agreement or consent order pursuant to the terms of BlockFi's agreement with the Multistate Working Group.

BlockFi elects to waive permanently any right to a hearing and appeal under I.C. § 23-19-6-4 (2021) and I.C. § 23-19-6-9 (2021) upon approval of this Consent Agreement by the Commissioner.

BlockFi admits the jurisdiction of the Division in this matter.

Solely for the purpose of terminating the Multistate Working Group investigation and in settlement of the issues contained in this Consent Agreement, BlockFi, without admitting or denying the findings of fact or conclusions of law contained in this Consent Agreement, consents to the Commissioner's entry of an Order Approving this Consent Agreement.

II. FACTUAL BACKGROUND

1. The Division has jurisdiction over this matter pursuant to the Indiana Uniform Securities Act, Ind. Code § 23-19, *et seq.* and rules promulgated thereunder ("Rules").

2. BlockFi Inc., a Delaware corporation, incorporated on August 1, 2017, with offices at 201 Montgomery Street, Suite 263, Jersey City, New Jersey, is a financial services company that, through its subsidiaries, generates revenue through cryptocurrency and other digital asset trading, lending, and borrowing, as well as investments and other types of transactions.

3. BlockFi Trading LLC, a Delaware limited liability company formed on May 28, 2019, with offices at 201 Montgomery Street, Suite 263, Jersey City, New Jersey, is a wholly owned subsidiary of BlockFi Inc. and acts as a money transmitter that accepts money and digital assets from investors and transfers the funds to BlockFi for investment in BIAs.

4. BlockFi, a Delaware limited liability company formed on January 11, 2018, with offices at 201 Montgomery Street, Suite 263, Jersey City, New Jersey, is a wholly owned subsidiary of BlockFi Inc. and an affiliate of BlockFi Trading LLC and is the issuer of the BIAs.

5. Starting on January 7, 2021, members of the Multistate Working Group contacted BlockFi to notify it that it may have offered and sold securities that may not comply with state securities laws.

6. Between July 19, 2021, and September 23, 2021, state securities regulators in New Jersey, Alabama, Texas, Vermont, Kentucky, and Washington brought administrative actions against BlockFi. Each of these state administrative actions alleged that BlockFi had offered and sold securities that were neither registered for sale in each respective state nor exempt from the registration requirements.

7. On February 14, 2022, BlockFi agreed to cease and desist offering and selling BIAs nationwide to new investors in the United States and cease and desist accepting further investments or funds in the BIAs by current U.S. investors, including in Indiana.

THE OFFER AND SALE OF SECURITIES NATIONWIDE

8. From at least March 4, 2019 through February 14, 2022 (the “Relevant Period”), BlockFi has offered and sold securities in the form of interest-bearing digital asset accounts called BIAs and marketed, offered, and sold those securities to Indiana residents.

9. On March 4, 2019, BlockFi publicly announced the launch of the BIA, through which investors could lend digital assets to BlockFi and in exchange, receive interest, “paid monthly in cryptocurrency.” Interest began accruing the day after assets were transmitted to BlockFi and compounded monthly, with interest payments made to accounts associated with each BIA investor, in digital assets, on or about the first business day of each month.

10. Investors in BIAs lent digital assets to BlockFi in exchange for BlockFi’s promise to provide a variable monthly interest payment.

11. BlockFi represented that it generated the interest it paid BIA investors by deploying investors’ digital assets in various ways, including loans made to institutional investors, lending U.S. dollars to retail investors, and investing in digital assets, equities, and futures.

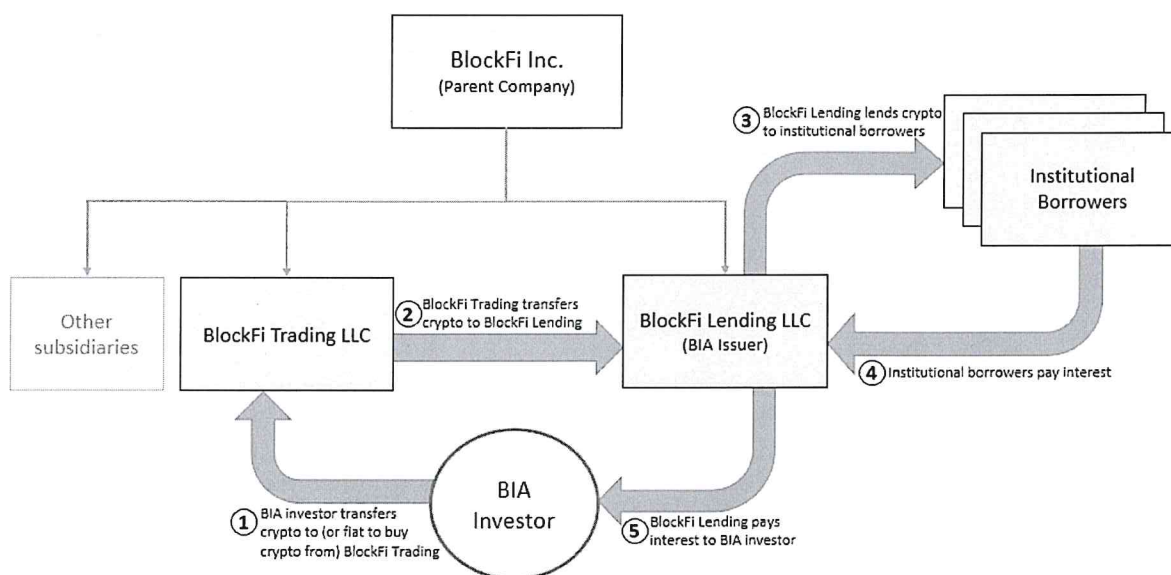
12. Under BlockFi’s terms for the BIA, investors:

grant BlockFi the right, without further notice to [the investor], to hold the cryptocurrency held in [the] account in BlockFi’s name or in another name, and to pledge, repledge, hypothecate, rehypothecate, sell, lend, or otherwise transfer, invest or use any amount of such cryptocurrency, separately or together with other property, with all attendant rights of ownership, and for any period of time and without retaining in BlockFi’s possession and/or control a like amount of cryptocurrency, and to use or invest such cryptocurrency at its own risk.

13. BlockFi offered and sold BIAs to obtain digital assets for the general use of its business, namely to use the assets in its lending and investment activities. These activities generated income for BlockFi which was used, in part, to pay interest to BIA investors. BlockFi

pooled the loaned assets, and exercised full discretion over how much to hold, lend, and invest. BlockFi had complete legal ownership and control over the digital assets loaned to it by BIA investors and advertised that it managed the risks involved.

14. To begin investing in a BIA, an investor could transfer digital assets to the digital wallet address assigned by BlockFi to the investor or purchase digital assets with fiat currency from BlockFi Trading LLC for the purpose of investing in a BIA. BlockFi Trading LLC accepted the digital asset or fiat from the investor, and then transferred the asset to BlockFi. BlockFi did not hold private keys for the investors' wallet addresses; rather, investors' digital assets were sent to BlockFi's wallet addresses at third-party custodians.



15. BIA investors were permitted to withdraw the equivalent to the digital assets they loaned to BlockFi and accrued interest at any time, with some limitations, and could borrow money in U.S. dollars against the amount of digital assets deposited in BIAs.

16. BlockFi adjusted the interest rates payable on BIAs for particular digital assets periodically, and typically at the start of each month. BlockFi set the rates based, in part, on “the yield that [BlockFi] can generate from lending,” to institutional borrowers, and thus interest rates were correlated with the efforts that BlockFi put in to generate that yield. BlockFi periodically adjusted its interest rates payable on the BIAs in part after analysis of current yield on its

investment and lending activity. BIA investors could demand that BlockFi repay the loaned digital assets at any time.

17. As of March 31, 2021, BlockFi and its affiliates held approximately \$14.7 billion in BIA investor assets. As of December 8, 2021, BlockFi and its affiliates held approximately \$10.4 billion in BIA investor assets, and had approximately 572,160 BIA investors, including 391,105 investors in the United States.

18. As of December 31, 2019, BlockFi and its affiliates held approximately \$205,815 in BIA investor assets from 52 Indiana residents. As of December 31, 2020, BlockFi and its affiliates held approximately \$25 million in BIA investor assets from 728 Indiana residents. As of December 31, 2021, BlockFi and its affiliates held approximately \$92 million in BIA investor assets from 5,290 Indiana residents.

MARKETING BLOCKFI'S BIAs

19. BlockFi offered and sold the BIA securities to investors, including retail investors, through advertising and general solicitations on its website, www.blockfi.com. BlockFi also promoted distribution of the BIA offering through its social media accounts, including YouTube, Twitter, and Facebook. In addition, through its “Partner” program, an affiliate marketing program in which participants could “earn passive income by introducing your audience to financial tools for crypto investors,” BlockFi extended its distribution of the BIA securities to retail investors through certain offers and promotions.

20. BlockFi regularly touted the profits investors may earn by investing in a BIA. When announcing the BIA, BlockFi promoted the interest earned, promising “an industry-leading 6.2% [annual percentage yield],” compounded monthly. BlockFi described it as “an easy way for crypto investors to earn bitcoin as they HODL.”

21. Within the first few weeks of launching the BIA, BlockFi again touted investors’ potential for profit. On March 20, 2019, BlockFi announced that BIAs experienced significant growth, including from large firms who participated in BIAs “as a way to bolster their returns.” BlockFi asserted that its “mission is to provide the average crypto investor with the tools to build their wealth,” and that it “look[ed] forward to giving even more investors a chance to earn a yield on their crypto.”

22. On April 1, 2019, BlockFi began to “tier” the interest rates that investors received, initially announcing that “BIA balances of up to and including 25 [Bitcoin] or 500 [Ether]

(equivalent to roughly \$100,000 and \$70,000 respectively) will earn the 6.2% APY interest rate. All balances over that limit will earn a tiered rate of 2% interest.” Even when changing the interest rates customers receive, BlockFi touted the yields to investors. On August 27, 2021, BlockFi stated that the adjustments to interest rates are done “with the goal of maintaining great rates for the maximum number of clients.”

23. On January 1, 2021, BlockFi advertised that it had “distributed more than \$50 million in monthly interest payments to [its] clients.”

24. As of November 1, 2021, the interest rates BlockFi paid investors ranged from 0.1% to 9.5%, depending on the type of digital asset and the size of the investment. For example, investors could receive 9.5% in interest for up to 40,000 Tether (“USDT”) and 8.5% for anything over 40,000 USDT, as well as 4.5% interest for up to 0.1 Bitcoin (“BTC”), 1% for 0.1 to 0.35 BTC, and 0.1% for anything over 0.35 BTC.

MISREPRESENTATION OF COLLATERALIZATION PRACTICES FOR INSTITUTIONAL LOANS

25. BlockFi’s offer of BIAs included an untrue statement of material fact on its website from March 4, 2019 to August 31, 2021, concerning its collateral practices and, therefore, the risks associated with its lending activity.

26. Beginning at the time of the BIA launch on March 4, 2019 and continuing to August 31, 2021, BlockFi made a statement in multiple website posts that its institutional loans were “typically” over-collateralized, when in fact, most institutional loans were not.

27. When BlockFi began offering the BIA investment, it intended to require over-collateralization on a majority of its loans to institutional investors, but it quickly became apparent that large institutional investors were frequently not willing to post large amounts of collateral to secure their loans.

28. Approximately 24% of institutional digital asset loans made in 2019 were over-collateralized; in 2020 approximately 16% were over-collateralized; and in 2021 (through June 30, 2021) approximately 17% were over-collateralized.

29. As a result, BlockFi’s statement materially overstated the degree to which it secured protection from defaults by institutional borrowers through collateral. Through operational oversight, BlockFi’s personnel failed to take steps to update the website statement to accurately reflect the fact that most institutional loans were not over-collateralized.

30. Although BlockFi made other disclosures on its website regarding its risk management practices, because of BlockFi's misrepresentations and omissions about the level of risk in its loan portfolio, BIA investors did not have complete and accurate information with which to evaluate the risk that, in the event of defaults by its institutional borrowers, BlockFi would be unable to comply with its obligation to pay BIA investors the stated interest rates or return the loaned digital assets and accrued interest to investors upon demand.

FAILURE TO COMPLY WITH REGISTRATION REQUIREMENTS

31. During the Relevant Period, BlockFi's offer and sale of BIAs was not done subject to an exception or exemption from registration.

32. During the Relevant Period, BlockFi offered and sold securities in Indiana that were not registered or permitted for sale in Indiana as required by I.C. § 23-19-3-1 (2021).

III. CONCLUSIONS OF LAW

33. The BIAs are securities as defined in I.C. § 23-19-1-2(28) (2021).

34. During the Relevant Period, BlockFi's offer and sale of securities in Indiana that were not registered or permitted for sale in Indiana violated I.C. § 23-19-3-1 (2021).

35. During the Relevant Period, BlockFi made an untrue statement of a material fact, and omitted to state a material fact necessary in order to make the statement made, in light of the circumstances under which it was made, not misleading, on its website concerning its collateral practices and, therefore, the risks associated with its lending activity, in violation of I.C. § 23-19-5-1 (2021).

36. The foregoing violations of I.C. § 23-19-3-1 (2021) and I.C. § 23-19-5-1 (2021) constitute the basis for the assessment of a civil penalty against BlockFi pursuant to I.C. § 23-19-6-4(d) (2021).

IV. TERMS

NOW, THEREFORE, in order to amicably resolve this matter in lieu of a formal Administrative Hearing, the Parties agree as follows:

- a) BlockFi hereby waives its rights to a hearing pursuant to I.C. § 23-19-6-4(b) (2021);
- b) BlockFi hereby waives its rights to an appeal pursuant to I.C. § 23-19-6-9 (2021);
- c) BlockFi's parent, BlockFi Inc., undertakes and agrees to file with the Commissioner for registration to offer and sell a new investment product, BlockFi Yield, which BlockFi Inc.

intends to register under the federal Securities Act of 1933, as required by I.C. § 23-19-3-1 (2021), within thirty (30) days of the filing of the federal registration statement.

- d) BlockFi and BlockFi's parent, BlockFi Inc., further undertake and agree to cease and desist offering or selling BIAs or any security that is not registered, qualified, or exempt to new investors in the United States and cease and desist accepting further investments or funds in the BIAs by current U.S. investors unless and until the BIAs or other securities have been registered by the Commissioner or are otherwise exempt.
- e) BlockFi's parent, BlockFi Inc., undertakes and agrees to cease and desist making an untrue statement of material fact in connection with the offer and sale of securities in Indiana.
- f) This Consent Agreement concludes the investigation by the Division and resolves any other action the Division could commence against BlockFi and its affiliates concerning the Findings of Fact and Conclusions of Law, including as it relates to the offer and sale of BIAs without registration, qualification, or otherwise complying with an exemption and the above-referenced statements regarding BlockFi's collateral practices made thereto during the Relevant Period.
- g) This Consent Agreement is entered into solely for the purpose of resolving the referenced multistate investigation and is not intended to be used for any other purpose. Other than the obligations and provisions set forth herein, this Consent Agreement does not limit or create liability for BlockFi nor limit or create defenses for BlockFi to any claims.
- h) This Consent Agreement and the order of any other State in any proceeding related to BlockFi's agreement to resolve the above-referenced multistate investigation (collectively, the "Orders") shall not be used as sole grounds to deny registration or qualification of securities issued by BlockFi or its parent BlockFi Inc.
- i) This Consent Agreement is not intended to subject any Covered Person to any disqualifications under the laws of the United States, any state, the District of Columbia, Puerto Rico, or the U.S. Virgin Islands, or under the rules or regulations of any securities or commodities regulator or self-regulatory organization, including, without limitation, any disqualification from relying upon the state or federal registration exemptions or safe harbor provisions. "Covered Persons" means BlockFi, its parent, or any of its affiliates and their current or former officers, directors, employees, or other persons that could

otherwise be disqualified as a result of the Orders.

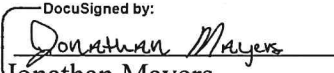
- j) This Consent Agreement does not preclude BlockFi from paying interest or returns to existing clients, refunding principal to investors consistent with the terms of the BIAs, or otherwise lawfully dealing with existing clientele.
- k) BlockFi shall cease and desist from offering or selling the BIAs or any security that is not registered, qualified, or exempt to new investors in Indiana and cease and desist accepting further investments or funds in the BIAs by current Indiana investors, unless and until the BIAs or other securities are registered or otherwise exempt in Indiana.
- l) BlockFi shall pay a total of \$943,396.22 to the Division, including a civil penalty and costs, pursuant to I.C. § 23-19-6-4(d) (2021) and I.C. § 23-19-6-4(e) (2021).
- m) BlockFi shall submit payment of \$3,235.82 in costs to the Division within twenty-one (21) days of approval of this Consent Agreement pursuant to I.C. § 23-19-6-4(e) (2021).
- n) BlockFi shall submit payment of a civil penalty totaling \$940,160.40 pursuant to I.C. § 23-19-6-4(d) (2021). Payment of this civil penalty shall be made as follows:
 - i. \$185,443.42 due within twenty-one (21) days of approval of this Consent Agreement;
 - ii. \$188,679.24 due on August 15, 2022;
 - iii. \$188,679.24 due on February 14, 2023;
 - iv. \$188,679.24 due on August 14, 2023;
 - v. \$188,679.26 due on February 14, 2024;
- o) If BlockFi fails to make any payment by the date agreed and/or in the amount agreed according to the schedule set forth above, all outstanding payments under this Consent Agreement, including post-order interest, minus any payments made, shall become due and payable immediately at the discretion of the staff of the Division without further application to the Commissioner.
- p) Payment must be made in one of the following ways:
 - i. BlockFi may make direct payments via the Indiana Securities Portal, www.securities.sos.in.gov/submit-cause-payment/; or
 - ii. BlockFi may pay by certified check, bank cashier's check, or United States postal money order, made payable to the Indiana Secretary of State and hand delivered or mailed to: Indiana Securities Division, 302 W. Washington Street, Room E-111, Indianapolis, IN 46204; or

- iii. BlockFi may transmit payment by bank wire transfer to the Indiana Securities Division, which will provide transfer instructions upon request.
- q) Payments delivered in person or by mail must be accompanied by a cover letter identifying BlockFi and the cause number of these proceedings. If payment is made via the Securities Portal or wire transfer, a notification must be emailed to securities@sos.in.gov.
- r) This Consent Agreement shall be binding upon BlockFi, its parent and affiliates, and their respective successors and assigns with respect to the provisions above and all future obligations, responsibilities, undertakings, commitments, limitations, restrictions, events, and conditions.
- s) The failure of Respondent to adhere to the terms of this agreement shall constitute grounds for administrative action by the Division against Respondent.
- t) This agreement shall have no effect on the Division's ability to take action with regard to any complaint or complaints against Respondent not relating to the unregistered offer and sale of the BIAs or the above-described misrepresentation.

APPROVAL. This agreement is expressly subject to the approval of the Commissioner and should the Commissioner fail or refuse, for any reason, to approve this agreement as written, the same shall be of no force or effect, and it shall not be admissible into evidence nor referred to in any hearing or other proceeding held in connection with the matters referred to herein.

For Respondent:


BlockFi Lending LLC

Signed 
Jonathan Mayers
General Counsel

Date: 3/10/2022

For Petitioner:

Indiana Secretary of State,
Securities Division

By: 
William H. Brainard, # 31904-29
Senior Enforcement Counsel
Indiana Secretary of State, Holli Sullivan
302 West Washington Street, Room E-111
Indianapolis, IN 46204
Telephone: (317) 232-6683
WBrainard@sos.in.gov